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FILED
DOCKETED BY: _____

2010 DEC -3 AM 8:41

5 State Bar #009508
6 Attorney for Defendant, Joseph Douglas Roberts

SUE HALL, CLERK
APACHE COUNTY SUPERIOR COURT

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

8 IN AND FOR THE COUNTY OF APACHE

9 STATE OF ARIZONA,

) No.CR2010-047

10 Plaintiff,

)
) **NOTICE OF SUBMISSION OF**
) **REBUTTAL EVIDENCE -**
) **NEWSPAPER ARTICLE**

11 vs.

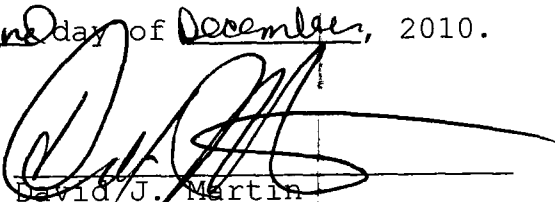
12 JOSEPH DOUGLAS ROBERTS,

) Assigned Honorable Donna J.
) Grimsley

13 Defendant(s).

14 COMES NOW Defendant, by and through the undersigned attorney,
15 and hereby submits the newspaper article believed to have been
16 published in the White Mountain Independent - Apache County issue
17 shortly after this Court's ruling of June 8, 2010. Defendant
18 submits the same as rebuttal evidence in the hearing commenced on
19 November 10, 2010.

20 RESPECTFULLY SUBMITTED this 2nd day of December, 2010.

21 
22 David J. Martin
Attorney for Defendant

23 Original of the foregoing delivered
24 the 2nd day of December, 2010 to:

25 Clerk of the Court
26 Apache County Superior Court
P.O. Box 365
St. Johns, AZ 85936

27 / / /

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1 COPY of the foregoing delivered
the 2nd day of December, 2010 to:

2 Honorable Donna J. Grimsley
3 Apache County Superior Court
4 P.O. Box 365
St. Johns, AZ 85936

5 COPY of the foregoing mailed, emailed, and faxed
the 2nd day of December, 2010 to:

6 Mr. John F. Beatty
7 Deputy Maricopa County Attorney
8 Maricopa County Attorney's Office
301 West Jefferson Street, 4th Floor
Phoenix, Arizona 85003
9 Via email John.Beatty@azbar.org
Facsimile 602/506-7950

10 By Jan
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County Attorney Whiting Responds to Judges Order

Last week the White Mountain Independent ran a story titled "Judge Throws County Attorney Off Murder Case." Because the reporter for the White Mountain Independent, Terrance Corrigan, did not contact the Apache County Attorney's Office, in any way, the article misinformed the public by including incorrect and misleading information. Because this case is of such public concern, a response from the Apache County Attorney's Office is set forth below.

1. Prosecution of the Case by Another Prosecution Agency Will Not Cost the County Any Extra Money

As is often done, prosecuting agencies prosecute cases for each other when there is a conflict of interest, when the Judge requests a prosecuting agency to withdraw or if other such situations arise which make it impractical for an agency to prosecute a case. Such is the situation with this case. Accordingly, it will not cost the County anything extra for another agency to prosecute the case.

2. The Chief Deputy and Investigators Became Concerned that the Defense Attorney, David J. Martin of Pinetop, Had Not Informed His Client of the Plea Agreement.

These concerns stemmed from the fact that David J. Martin has had multiple bar complaints filed against him by previous clients. Upon a public records request from the Arizona State Bar (after the current matter was brought to the Court's attention) it was discovered that there were over 900 pages that had been filed in relation to these many bar complaints. This served to subsequently confirm the concerns that the plea agreement had not been communicated to the defendant. Since the plea agreement involved not seeking the death penalty, this office felt it was very important that the defendant be fully informed of the options under the plea agreement.

3. The Apache County Attorney's Office and Superior Court Judge Disagree on the Law

Apache County Attorney Chief Deputy, Martin Brennan, gave legal advice to the Apache County Attorney's Office regarding interviewing a suspect who at the time is represented by legal counsel. Last year the United States Supreme Court overturned twenty-something years of established case law in ruling that a defendant could waive his right to counsel under the 6th amendment. The reasoning and logic behind the decision stem from the fact that a defendant can waive his rights under the 4th or 5th amendment at anytime. Therefore, a defendant can waive any other constitutional protection, should he so choose.

As a result of this new case law the Chief Deputy advised the investigators for the County Attorney's Office that it was all right to speak with a represented defendant as long as the defendant was re-mindful and waived their 6th amendment right. The fine point of this decision does not distinguish between certified peace officers who work for law enforcement agencies and investigators who work for a prosecuting agency.

The County Attorney's Office could take months and months to appeal the case and receive a decision, overturning Judge Grimsley's ruling, from the Arizona Court of Appeals and the Arizona Supreme Court. Still this would waste valuable time. In the meantime what will serve the public and victims best is to allow another agency to prosecute the case, and allow justice to run its course in the fastest manner possible.

4. Will the Death Penalty Result?

Whether or not the death penalty will be sought against this defendant will be up to the prosecuting agency that ultimately prosecutes the case. What is certain is that the plea agreement that was on the table (before Judge Dennis Grimsley asked the County Attorney's Office to remove itself from the case) was 25 years to life. Had the defendant plead guilty to the First Degree Murder the charges that would have been available to the Court would have been from 25 years to Life. The ruling from

the Judge asking the County Attorney's Office to be removed from the case effectively removed that plea agreement. It will be up to the next prosecuting agency as to whether or not to seek the death penalty.

5. Costs of the Bar Complaint

In almost ten (10) years of practicing law, County Attorney, Michael B. Whiting, has never had a bar complaint filed against him. In this case the complaint is not filed directly against Mr. Whiting, but against his office for actions taken by attorneys under his control and supervision. As opposed to trying to find a scapegoat and point the finger at someone who has made a mistake, Mr. Whiting has chosen to stand beside this employee and let the office take the blame instead of singling out one particular person. Although this has resulted in a bar complaint, Mr. Whiting feels it is more important to stand together and stay loyal to the office than look for somewhere to lay the blame.

6. What is the Status of the Other Defendants Involved in the Three Murders?

Out of the six (6) defendants four (4) have plead guilty. Three (3) have been sentenced and one is awaiting sentencing. One was found incompetent to stand trial. Willie Inman has pleaded guilty to three first degree murders involving the victims William "Sonny" McCarragher, Daniel Achtem and Luis Enrique "Ricky" Flores. He is awaiting sentencing and faces up to three consecutive life sentences. The sole defendant left in Mr. Joseph Roberts who will now be prosecuted by another agency.

Mr. Whiting stated that, "To have five out of six defendants already plead guilty, sentenced or their cases otherwise handled in less than a year exceeded everyone's expectations." He has indicated that should the death penalty not be sought in the Roberts case there is reason to think that the case will be resolved within the next calendar year. If the next prosecuting agency chooses to seek the death penalty, the case may take an additional two-to-four years before it is concluded.